



Legislative Department
Seattle City Council
Memorandum

Date: September 9, 2011

To: Councilmembers Sally J. Clark, Tim Burgess, and Sally Bagshaw
Committee on the Built Environment (COBE)

From: Rebecca Herzfeld, Council Central Staff

Subject: **September 14, 2011, COBE Meeting: Proposed Transfer of Development Rights Program in the Pike/Pine Conservation Overlay District**

Introduction

At the COBE meeting on July 27, 2011, staff provided an overview of the legislation sponsored by Councilmember Tom Rasmussen to establish a Transfer of Development Potential (TDP) program for the Pike/Pine neighborhood. The goal of the proposal is to add to the current incentives for maintaining the Pike/Pine neighborhood's existing stock of "character structures" (defined as buildings that are at least 75 years old), while continuing to protect the area's special character.

While a TDP program would provide another tool for encouraging retention of older structures, it is not the "silver bullet" that will protect large numbers of older structures in Pike/Pine. The success of the proposed program will depend on market conditions, developers' interest in purchasing development rights for limited additional development capacity, and the willingness of property owners to sell rights and forgo the opportunity to redevelop their properties in the future. In any case, the current proposal creates only limited opportunities for developers to acquire development rights, while the supply could be considerable. This is due in part to the need to limit the program, at least initially, to the Pike/Pine neighborhood, and to avoid establishing a program that could backfire by increasing pressure for redevelopment of sites with character structures.

A public hearing on the proposal was held on August 15, 2011, and the Committee held a brief follow-up discussion on August 18. This memo addresses five issues that were raised in public comments, provides options for addressing the issues, and requests direction from the Committee.

Overview of Proposed Pike/Pine TDP Program

The proposed legislation would establish a TDP program that would apply only in the commercial zones within the boundaries of the Pike/Pine Conservation Overlay District (District). Both sending and receiving sites would be located in this area. The proposal would also designate a smaller area within the District, called the Conservation Core. This area has the highest concentration in Pike/Pine of character structures that were identified in a 2011 Historic Resources Survey as having potential historic value. Any character structure within the Conservation Core would be eligible to sell development potential. In addition, the legislation would establish new limits on structure width and depth in the Conservation Core and would prohibit receiving sites within the Core, in order to address the greater need for compatibility with existing development in this area.

A site would be eligible to sell development potential if it meets one of the following conditions:

- It contains a designated landmark structure;
- It is located anywhere in the Overlay District, and contains a character structure identified in the 2011 Historic Resources Survey as having a high degree of architectural integrity, representing the Pike/Pine neighborhood's building typology, and being compatible with nearby structures in the Pike/Pine neighborhood (these structures would be listed in a Department of Planning and Development (DPD) Director's Rule); or
- It is located within the Conservation Core and contains any character structure.

A sending site could transfer the unused amount of floor area available on the lot, based on floor area ratio (FAR) limits. If the character structure is a designated landmark, the amount that could be transferred would be doubled. The map attached to this memo illustrates the boundaries of the proposed Conservation Core and eligible TDP sending sites.

The owner of a TDP sending site would be required to bring the character structure into compliance with applicable codes and to maintain the structure for a minimum of 50 years with no significant alterations. If the structure is a designated landmark, the Landmarks Board may require elements of the building to be preserved or restored.

Eligible TDP receiving sites are those located in an NC3 zone with a 65 foot height limit that are located outside the Conservation Core. A receiving site would not be eligible if the new project would result in the demolition or significant alteration of any character structure. On receiving sites, an additional 10 feet above the current 65 foot height limit, for a total of 75 feet, would be permitted (note that this is a change due to public comment about the May DPD draft, which proposed a height of 85 feet on TDP receiving sites). In order to accommodate the transferred development potential, the floor area being transferred to a receiving site does not count toward the regular FAR limit. Development on receiving sites could exceed the current FAR limits, with or without an increase in height. The square footage gained from transferred development potential could only be used for housing.

Under the proposed program, there are about 21 possible receiving sites in the Pike/Pine Conservation Overlay District, with the capacity to absorb about 215,000 square feet of development potential (see Table B), if it is assumed that all these sites take advantage of the new TDP program.

DPD estimates that the average rate of development in Pike/Pine has been about 100,000 square feet per year, which equals approximately one to two new buildings annually. If the new projects all take advantage of the TDP program, and assuming that the average amount available to sell per eligible sending site is approximately 22,000 square feet, about ten sending sites could sell TDP over a 20 year period. That means that about 12 percent of eligible sending sites would be able to take advantage of the program over twenty years, as shown on Table A.

Table A: Estimated Effect of proposed Pike/Pine TDP Program over 20 years

	Estimated <i>number</i> of eligible sending sites that could sell TDP to meet potential demand	Estimated <i>percent</i> of 84 eligible sending sites that could sell TDP to meet potential demand	Estimated percent of <i>all 146 lots with character structures</i> that could sell TDP to meet potential demand
TDP absorption estimate	10	12%	7%

Issues raised in public comments

Five issues that have been raised about the proposal are discussed below.

Issue #1: Should the proposed TDP program allow transfer of development potential outside of the Pike/Pine neighborhood?

Since the idea of a TDP program was first raised, the community has advocated for allowing receiving sites to be located in other neighborhoods. Because Pike/Pine is a relatively small area, this would expand the market for development rights without putting undue pressure on the character of the neighborhood. To explore this idea, the City hired a consultant in 2008 to analyze the idea of allowing rights from Pike/Pine to be sold to receiving sites Downtown. The consultant found that the downtown market would be flooded with too many rights from Pike/Pine, which would drive down the price of the rights and limit their usefulness in both areas, so this idea was discarded. Since then, Pike/Pine advocates have proposed selling rights to other neighborhoods, including Capitol Hill, the 12th Avenue part of the Central Area, and South Lake Union.

An important consideration in expanding the TDP program beyond the boundaries of Pike/Pine is that it would require an increase in height and/or density in the area that would receive the Pike/Pine development potential. The people in such receiving areas may have competing priorities for the types of public benefits they would like to see used by developers gaining the bonus floor area created through the height and/or density increases, such as affordable housing, preservation of landmarks in their own neighborhood, or additional open space. In addition, outside of downtown, most neighborhoods would not have enough increased development capacity to accommodate many development rights from Pike/Pine, even after an upzone is adopted. South Lake Union and other urban centers such as the University District and Northgate are the most likely candidates to absorb additional development potential from Pike/Pine.

Given these considerations, three options for addressing this issue are:

1. Adopt the current proposal as a first step towards expanding it at a later date to allow for additional receiving areas.
2. Adopt the proposed mechanism for a TDP program in Pike/Pine as a placeholder that would establish applicable development standards and eligible sending sites, but do not make it effective until receiving area(s) have been established outside of Pike/Pine.
3. Wait to adopt the proposed TDP program until there are the resources to identify one or more areas outside Pike/Pine as receiving areas for development potential, and to work with community members there on an upzone and establishment of program parameters.

For any of these options, Council could adopt a resolution that calls for establishing a citywide framework for TDP programs. A draft resolution is attached for your review. Note that staff waited to check about whether the Mayor would concur with the resolution until getting direction from the Committee, so while the draft shows that the Mayor concurs, this is not yet known.

Committee direction on expansion of the proposed TDP program outside of Pike/Pine and the adoption of a resolution calling for a framework for TDP programs:

Issue #2: Should all character structures in the Overlay District be eligible sending sites?

As noted on page 2, under the proposed legislation some character structures that are located outside the Conservation Core would not be eligible TDP sending sites. The following criteria for eligible sending sites outside the Core are proposed in subsection 23.73.005.A:

1. The structure retains a high degree of architectural integrity;
2. The structure represents the Pike/Pine neighborhood's building typology, which is characterized by use of exterior materials and design elements such as masonry (especially brick) and timber structures; multi-use loft spaces; very high, fully-glazed storefront windows; and decorative details such as cornices, emblems and embossed building names;
3. The structure is compatible with the architectural scale, rhythm, and patterns of nearby structures in the Pike/Pine neighborhood.

In order to identify the character structures that meet these criteria, the City Council and DPD contracted with Mimi Sheridan, the historic preservation consultant who did the original survey of Pike/Pine historic resources in 2002, to update her previous work. The updated survey, which was completed last month, removed three buildings that were demolished or significantly altered in the past ten years. It also added twelve buildings to the list of character structures that meet the criteria, for a net increase of nine eligible TDP sending sites. All of the newly identified sites are located outside the proposed Conservation Core. The updated survey, including new building photographs, is available on the Department of Neighborhoods website at: <http://web1.seattle.gov/dpd/historicalsites/>, by choosing Pike/Pine in the drop-down list of neighborhoods in the "search by property attribute" box and clicking on the search button.

Two people have commented that it is unfair to make a distinction between character structures, and that all buildings 75 years old or older should be eligible sending sites. While this would treat all properties that contain such older structures in the same way, there are three drawbacks to this approach.

The first drawback is that allowing every character structure to transfer development potential would increase the amount of square footage available for sale in Pike/Pine by 57%. As shown on Table B below, 53 more buildings would become eligible sending sites, and approximately 3.2 million square feet of development potential would be available for sale. To put this in perspective, since 1985 when the TDR program was established in Downtown, only 1.4 million square feet of rights have been sold there, in an area over seven times larger than Pike/Pine where much bigger buildings are permitted. In addition, an increase of this magnitude in the amount of development potential available for sale could reduce their value and diminish the incentive for property owners to sell them.

Table B: Comparison of available TDP in Pike/Pine under the proposed legislation versus if all character structures are eligible sending sites

Type of Lot	Number of Lots	Estimate of available TDP in square feet (SF)
Character structures within the proposed Conservation Core	59	1,291,200 SF
Character Structures located outside the Conservation Core that meet the criteria in the Land Use Code	31	607,900 SF
Landmark Structures (all located outside the Conservation Core)	3	141,700 SF
TOTAL available TDP under Proposed Legislation	93	2,040,800 SF
Character structures located outside the Conservation Core that do not meet the criteria in the Land Use Code	53	1,161,300 SF
TOTAL available if all character structures are eligible sending sites	146	3,202,100 SF
Percent Increase in square footage of TDP available to sell if all character structures are eligible		57%

A second drawback of expanding the number of eligible sending sites is the nature of some of the character structures that were not included on the list. For example, some are single family homes like the one shown below that do not contribute to the “auto-row” character of Pike/Pine, but would have a large number of square feet to sell because of their small size.



1201 E. Pine Street

Others are one-story commercial buildings that have lost the value related to their original design and function due to extensive alterations, such as the three buildings shown below. Similar to the single family home above, these buildings would have a large amount of development potential to sell.



1416 10th Avenue East



1400 E. Pike Street



1001 E. Union Street

In contrast, the downtown TDR program recognizes that opportunities to sell development rights are limited, and only designated landmarks and contributing buildings within a historic district can participate. The proposed Pike/Pine TDP program would be much more flexible than the downtown program, but still proposes to limit sending sites to those structures that are most important to preserving neighborhood character.

The third drawback to expanding the TDP program to all character structures is that it could make it more difficult to convince other neighborhoods of the value of accepting rights from Pike/Pine if the program is expanded at a later date. The value of preserving every building over 75 years old in Pike/Pine may not be apparent to people in other areas, particularly if they are interested in preserving designated landmark buildings in their own neighborhoods. If the program is expanded to other areas

at a later date, the criteria that define a site that is eligible to transfer development potential outside of Pike/Pine could be more restrictive than those that apply within the Overlay District.

Four options for addressing this issue are:

1. Adopt the current proposal (eligible sending sites are shown on attached Map 1.
2. Adopt the current proposal, together with language in a resolution that calls for an analysis of public benefits that should be the City's priorities for TDR and TDP programs.
3. Allow transfer of development potential from any character structure. As shown on Table B, this would increase the number of eligible sending sites from 93 to 146, and increase the square footage available for sale by approximately 1.2 million square feet, or 57%.
4. Allow character structures that are not in the Conservation Core and that do not meet the proposed criteria to sell up to half of the available rights from the site. While the increase in the number of eligible sending sites would be the same as in Option 2, the increase in development potential available for sale would be about 5801,000 square feet, a 28% increase.

Committee direction on the how eligible sending sites should be defined:

Issue #3: Should use of square footage gained through TDP be limited to housing?

One comment asked about the rationale for restricting the transferred square footage to residential use. The commenter pointed out that while most developers will want to build housings, some "may see fit to create office or live-work lofts, and they should be able to decide based on market demand."

The proposal limits the use of transferred square footage to housing because of the direction provided in the Pike/Pine Neighborhood Plan. When the Plan was adopted in 1999, the neighborhood was very concerned that office development moving up the hill from Downtown would overwhelm their community. The Pike/Pine Overlay District, which was adopted to implement the neighborhood plan, limits commercial uses to a floor area ratio (FAR) of 2, rather than the FAR otherwise permitted for commercial-only development in NC3 65 zones, which is 4.25 in NC3 65 zones and 4.5 in NC3 85 zones, in order to prevent this from happening.

However, the Overlay District was adopted before the concept of a "live-work unit" was created as a commercial use category in 2006. A live-work unit is a space in which a permitted business is combined with a residential living space for the owner or an employee of the business. It is considered a commercial use, but also has a strong residential component. This type of commercial use could be encouraged through the TDP program while still meeting the intent of the Overlay District to discourage single-purpose office buildings.

Three options for addressing this issue are:

1. Maintain the proposed restriction on the transferred square footage to residential use.
2. Allow transferred square footage to be used for live-work units as well as residential uses.
3. Allow transferred square footage to be used for any commercial use.

Committee direction on limiting square footage gained through TDP to housing:

Issue #4: Should the proposed boundaries of the Conservation Core be expanded?

At the public hearing, a suggestion was made to include two additional areas in the Conservation Core: 1) the south half of two blocks along Union between 10th and 12th Avenues; and 2) the old BMW dealership site at the corner of East Pike Street and Harvard Avenue East (see attached Map 2).

In proposing the boundaries of the Conservation Core, the focus was on the area in the center of the Overlay District along Pike and Pine Streets and Broadway, which included a large number of character structures that met the criteria in the Code. This area also has active commercial uses along almost every street front, and generally has smaller parcels and less land assembly compared to the area outside the proposed Core.

The two areas proposed for inclusion in the Conservation Core were omitted for several reasons. One is that the activity and development there do not closely match the characteristic of the core. Also these areas are either close to the edge of the Overlay District, and/or contain larger sites that could take advantage of the current incentives for incorporating character structures, such as the one allowing additional height if an existing character structure is included in the development. Including these parcels in the Conservation Core would add six more character structures that do not meet the proposed criteria for eligible sending sites, which would increase the supply of development potential by approximately 196,000 square feet, or about 10%. This would likely lower the sale value of all Pike/Pine development potential.

Four options for addressing this issue are:

1. Adopt the proposed boundaries of the Conservation Core.
2. Add only the half-blocks south of Union Street to the Conservation Core (this would increase the supply of development potential by approximately 120,000 square feet).
3. Add only the parcels at the corner of East Pike Street and Harvard Avenue East (this would increase the supply of development potential by approximately 76,000 square feet).
4. Add both proposed areas to the Conservation Core.

Committee direction on expansion of the Conservation Core boundaries:**Issue #5: Should the proposed structure width and depth limits in the Conservation Core either be removed, or be applied throughout the Overlay District, including on receiving sites?**

The current regulations in the Overlay District regulate building bulk in two ways: buildings along Pike and Pine Streets are limited to a width of half a block, and a maximum floor size limit applies above a height of 35 feet on lots over 15,000 square feet in size. Exceptions to these limits are allowed if a project incorporates a character structure.

The proposal would retain the current regulations. In addition, within the Conservation Core, it would add a width limit of 120 feet for structures that do not abut Pike or Pine Streets, and a structure depth limit of 128 feet. Character structures that are retained on a lot would not count toward the width and depth limits in projects that do not demolish any character structures.

Two comments from the public hearing addressed structure width and depth limits. The first one suggested that the width and depth limits proposed for the Core area also be applied to receiving sites outside of the Core, to keep buildings that buy development potential from getting too bulky. A similar idea was originally proposed in the draft circulated for public review in May, 2011, when the

proposal would have allowed an additional 20 feet of height on receiving sites, and the portion of the structure allowed above the height limit would have been subject to a width and depth limit. However, the community feedback was that 85 feet was too tall, and their recommendation was to trade off allowing a somewhat bulkier building on the receiving site for a lower height limit.

The current legislation incorporates this feedback, and would permit only ten additional feet in height on receiving sites. The proposal also eliminated the additional bulk limits on receiving sites, because they were not as important for a 75 foot tall structure, and because they would significantly reduce the capacity to use development potential purchased from eligible character structures.

The other comment about the proposed width and depth limits was that they should either be applied throughout the Overlay District, or not at all. Because of the pattern of parcel size and assembly outside of the Conservation Core, applying more stringent width and depth standards there would substantially restrict the scale of new development, and would warrant additional analysis and public review to fully evaluate the impacts. It is likely that completing this work would delay adoption of the legislation until mid-2012 or later. Applying the more stringent standards might also work against the use of incentives that are already in place that permit new buildings to be bigger if they incorporate a character structure on the same lot. The additional floor area allowed in this situation was seen as a necessary economic incentive to offset the higher costs of retaining an older structure in the development.

The other option proposed in the comment would be to drop the additional width and depth limits in the Conservation Core. If these additional bulk limits are dropped, there would be no deterrent to assembling larger development sites, and it is more likely that over time the scale of the development in this area will increase and that a larger number of character structures will be demolished.

Four options for addressing this issue are:

1. Adopt the proposed bulk limits in the Conservation Core.
2. Expand the bulk limits proposed for the Conservation Core to the rest of the Pike/Pine Conservation Overlay District, and delay the adoption of the legislation until further analysis and public review is completed.
3. Remove the proposed bulk limits in the Conservation Core. Note that if this options is chosen and the Committee decides to allow any character structure to be an eligible sending site (Option 3 for Issue #2), the only remaining difference between the Conservation Core and the rest of the District would be a prohibition on receiving sites.

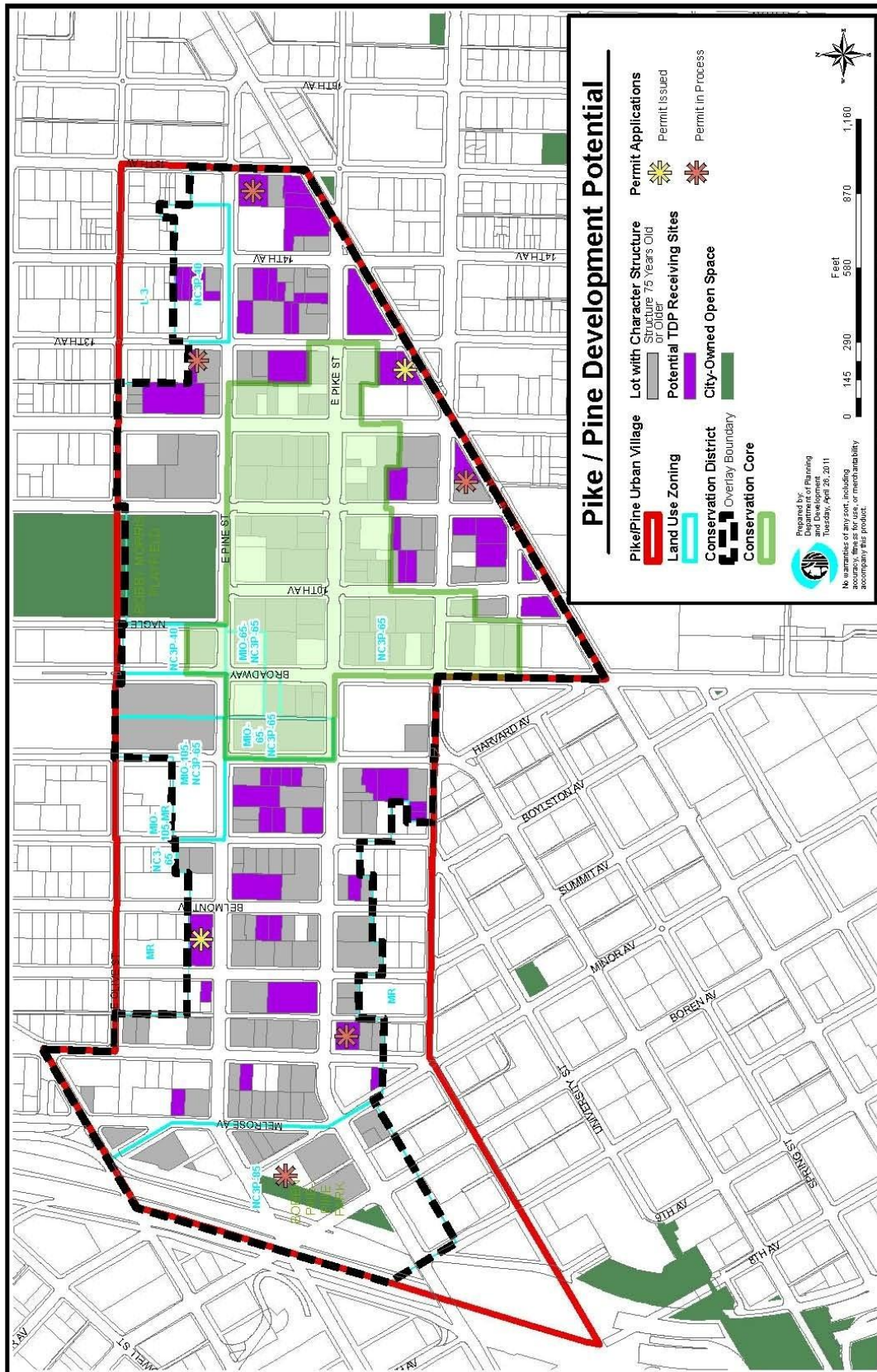
Committee direction on building width and depth limits:

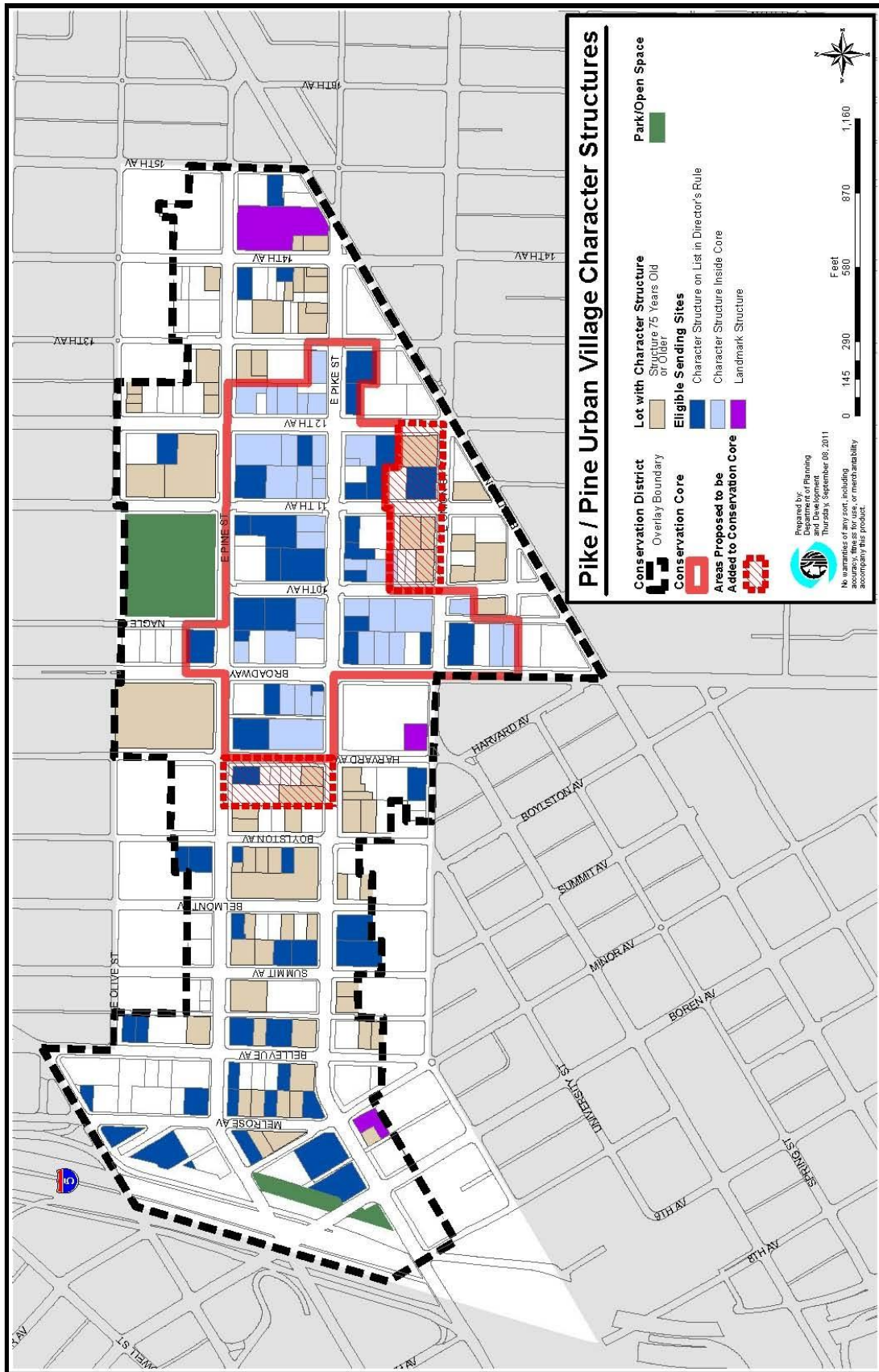
Next Steps

Staff will respond to the direction provided today and prepare for Committee discussion and possible vote at a future meeting.

Attachments: Map of proposed Conservation Core and eligible sending sites
Map of possible additions to the Conservation Core
Draft resolution language

Attachment to Memo for September 14, 2011, COBE Meeting: Map 1





Attachment to Memo for September 14, 2011, COBE Meeting

NOTE: This companion resolution is intended to accompany the ordinance introduced as Council Bill 117235, which would amend the Land Use Code to establish a transfer of development potential program in the Pike/Pine neighborhood. It assumes passage of that bill.

DRAFT RESOLUTION _____

A RESOLUTION declaring the City of Seattle's intent to establish of a framework for the application of transfer of development rights (TDR) and transfer of development potential (TDP) programs and the criteria for prioritizing the areas where such programs apply.

WHEREAS, a transfer of development rights (TDR) program was established in Downtown Seattle in 1985, and this program was expanded to South Downtown in April, 2011 by Ordinance 123589; and

WHEREAS, a TDR program was established in a portion of the South Lake Union Urban Center by Ordinance 122611 in December, 2007; and

WHEREAS, transfer of development potential (TDP) program was established in the Highrise zone in the First Hill Urban Center Village in December, 2010 by Ordinance 123495; and

WHEREAS, the legislation introduced as Council Bill 117235 establishes a new TDP program in the Pike/Pine neighborhood to encourage retention of older structures and to conserve neighborhood's unique character as Seattle's original "Auto Row"; and

WHEREAS, in addition to creating incentives for affordable housing, the Council and Mayor are interested in developing and extending incentive programs that provide other public benefits, such as public open space, protection of rural areas, preservation of historic buildings and neighborhood character, and maintenance and development of spaces for cultural and arts organizations; and

WHEREAS, the City Council stated its support for developing a new Interlocal Agreement with King County for a rural transferable development rights program Resolution 31147, which was adopted in August, 2009; and

WHEREAS, in April, 2011, the Council adopted Resolution 31291, which established a work plan leading to submittal of proposed legislation to the City Council by the first quarter of 2012 to amend the Land Use Code to streamline incentive zoning terminology, clarify and consolidate incentive zoning requirements, and create a simplified, cohesive set of affordable housing incentive programs that are easier to understand and use; and

WHEREAS, the Mayor intends to submit area-wide rezones to the Council in the next several years for the South Lake Union, Northgate, and the University District Urban Centers and for light rail station areas, and the rezone legislation is expected to include incentive zoning provisions;
NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. It is the Council's and the Mayor's intent to consider establishing transfer of development rights (TDR) and transfer of development potential (TDP) programs in areas outside of neighborhoods where current TDR and TDP programs apply.

Section 2. Once the legislation called for in Resolution 31291 that clarifies and consolidates incentive zoning requirements is completed, the Department of Planning and Development (DPD) will work with the Planning Commission and appropriate city departments to determine the following and submit recommendations to the City Council, with proposed legislation if appropriate, by December, 2012:

a. What public benefits should be priorities for TDR and TDP programs, and should these public benefits differ from the benefits expected from other incentive zoning programs?

b. What criteria should be used to determine where TDR and TDP programs should be established? Under what circumstances would it be appropriate to expand current TDP and TDR programs to permit transfers of development rights and potential into and/or out of the areas where these programs now apply?

c. Are there areas that should be given priority as “sending areas” from which development rights or potential may be transferred when TDR and TDP programs are expanded or established? If so, what criteria should be used to identify these sending areas?

d. Are there areas that should be prioritized as “receiving areas” for development rights or potential when TDR and TDP programs are expanded or established? If so, what criteria should be used to identify these receiving areas?

Adopted by the City Council the ____ day of _____, 2011, and signed by
me in open session in authentication of its adoption this _____ day
of _____, 2011.

President _____ of the City Council

THE MAYOR CONCURRING:

Michael McGinn, Mayor (Note: whether the Mayor will concur is not yet known)

Filed by me this ____ day of _____, 2011.

Monica Martinez Simmons, City Clerk

(Seal)